

2702

No. 13015

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United States  
Court of Appeals  
for the Ninth Circuit.

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TITLE INSURANCE AND GUARANTY COMPANY, a Corporation; EDITH A. WILDE, Administratrix of the Estate of JEROME J. WILDE, Deceased, and MERVYN GOODMAN,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record

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Appeal from the United States District Court,  
Northern District of California,  
Southern Division.



No. 13015

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United States  
Court of Appeals  
for the Ninth Circuit.

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TITLE INSURANCE AND GUARANTY COMPANY, a Corporation; EDITH A. WILDE, Administratrix of the Estate of JEROME J. WILDE, Deceased, and MERVYN GOODMAN,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

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Special Attorney,

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Special Attorney,

718 Crocker Building,  
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San Francisco, Calif.,

Attorneys for Appellee.





In the District Court of the United States in and  
for the Northern District of California, South-  
ern Division

No. 22261-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

193 ACRES OF LAND, CITY AND COUNTY  
OF SAN FRANCISCO, STATE OF CALI-  
FORNIA; MATILDA PRIOR ANDREWS  
II, et al.,

Defendants.

### VERDICT

Parcel No.	Acreage
16 .....	4,611 square feet
45 .....	27,759 square feet
46 .....	51,562 square feet
50 .....	120,000 square feet

### Verdict

We, the jury, find that the fair market  
value of Parcel 16 containing 4,611 sq.  
ft. is the sum of.....\$ 46.11

We, the jury, find that the fair market  
value of the annual use of Parcel 16  
is the sum of.....\$ 20.00

We, the jury, find that the fair market  
value of Parcel 45 containing 27,759 sq.  
ft. is the sum of.....\$ 277.59

We, the jury, find that the fair market value of the annual use of Parcel 45 is the sum of .....\$ 125.00

We, the jury find that the fair market value of Parcel 46 containing 51,562 sq. ft. is the sum of.....\$ 515.62

We, the jury, find that the fair market value of the annual use of Parcel 46 is the sum of .....\$ 232.50

We, the jury, find that the fair market value of Parcel 50 containing 120,000 sq. ft. is the sum of.....\$2,400.00

We, the jury, find that the fair market value of the annual use of Parcel 50 is the sum of .....\$ 980.00

/s/ SIDNEY P. LAGORIO,  
Foreman.

[Endorsed]: Filed December 13, 1950.

In the District Court of the United States in and  
for the Northern District of California,  
Southern Division

No. 22261-G

UNITED STATES OF AMERICA,

Plaintiff.

vs.

193 ACRES OF LAND IN THE CITY AND  
COUNTY OF SAN FRANCISCO, STATE  
OF CALIFORNIA, MATILDA PRIOR AN-  
DREWS II, et al.,

Defendants.

PRELIMINARY JUDGMENT AS TO  
PARCELS 16, 45, 46 AND 50

The above-entitled action came on for trial before the above-entitled Court, the Honorable Oliver J. Carter presiding, as to Parcels 16, 45, 46 and 50, on the 11th day of December, 1950, plaintiff being represented by its attorneys M. Mitchell Bourquin, Special Assistant to The Attorney General; George De Lew, Esquire, and J. Harold Weise, Esquire, and defendants Title Insurance and Guaranty Company, a corporation, sued herein as Eighth Doe, Edith A. Wilde, Administratrix of the Estate of Jerome J. Wilde, sued herein as Fourth Doe, and Mervyn Goodman, sued herein as Fifth Doe, being represented by their attorneys Young, Rabinowitz and Chouteau, and Frank T. O'Neill, Esquire, and defendants Charles N. Douglas, sued herein as

Sixth Doe, Ethel Tisdall Allen, sued herein as Seventh Doe, and Maria Lorenza Trussell, being represented by their attorney Frank A. Rethers, and a jury having been regularly impaneled and sworn for the sole purpose of determining the fair market value of Parcels 16, 45, 46 and 50 of the land taken by this action and subject of this trial, and more particularly hereinafter described, together with any damages resulting therefrom, including the fair market value of the use and occupancy of said parcels of land from the date of plaintiff's possession up until the date of trial, and evidence both oral and documentary having been introduced at the trial and the jury having been fully instructed returned its verdict on the 13th day of December, 1950, finding the fair market value of said parcels of land on the 25th day of July, 1952, to be as follows: Parcel 16, Forty-Six and 11/100 Dollars (\$46.11); Parcel 45, Two Hundred, Seventy-Seven and 59/100 Dollars (\$277.59); Parcel 46, Five Hundred, Fifteen and 62/100 Dollars (\$515.62); and Parcel 50, Two Thousand, Four Hundred and No/100 Dollars (\$2,400.00); and that the fair market value of the damages resulting therefrom including the fair market value of the use and occupancy of said parcels of land from the aforesaid 25th day of July, 1942, to and including the date hereof to be as follows: Parcel 16, Twenty and No/100 Dollars (\$20.00); Parcel 45, One Hundred, Twenty-Five and No/100 Dollars (\$125.00); Parcel 46, Two Hundred, Thirty-Two and 50/100 Dollars (\$232.50); and Parcel 50, Nine Hundred, Eighty and No/100 Dollars (\$980.00), and the Court being fully informed, finds:

## I.

The Complaint in this action was filed on the 25th day of July, 1942, and that plaintiff, through the United States Navy Department, did on the aforesaid 25th day of July, 1942, enter into the exclusive possession and control of said Parcels 16, 45, 46 and 50 and ever since has been and now is in the exclusive possession and control of said parcels of land.

## II.

That the use of which said parcels of land hereinafter described are taken and condemned by the plaintiff is one authorized by law and said property and the taking thereof is necessary and suited to said use.

## III.

That all parties interested directly or indirectly in the above-mentioned parcels of land have been personally served with process or have appeared in said action; that such parcels of land, together with all claimants and parties interested therein, are within the jurisdiction of this Court which has power and authority to enter this judgment.

## IV.

That all taxes and assessments against the property hereinafter described have been paid, and defendant City and County of San Francisco has filed a Disclaimer, and the Court finds that said disclaiming party has no interest in said property or in the compensation to be awarded for the taking thereof.



## V.

That the fair market value of Parcels 16, 45, 46 and 50 subject of this action, and hereinafter more particularly described, on the aforesaid 25th day of July, 1942, was as follows: Parcel 16, Forty-six and 11/100 Dollars (\$46.11); Parcel 45, Two Hundred, Seventy-seven and 59/100 Dollars (\$277.59); Parcel 46, Five Hundred, Fifteen and 62/100 Dollars (\$515.62); and Parcel 50, Two Thousand, Four Hundred and No/100 Dollars (\$2,400.00).

## VI.

That the fair market value of damages resulting therefrom including the use and occupancy of said parcels of land from the aforesaid 25th day of July, 1942, up until the date of trial is as follows: Parcel 16, Twenty and No/100 Dollars (\$20.00); Parcel 45, One Hundred, Twenty-five and No/100 Dollars (\$125.00); Parcel 46, Two Hundred, Thirty-two and 50/100 Dollars (\$232.50); and Parcel 50, Nine Hundred, Eighty and No/100 Dollars (\$980.00).

## VII.

That at the time of and immediately prior to the filing of the Complaint and entering into possession by plaintiff, the following persons were the owners of an undivided interest in said parcels of land as follows:

72/360 in Clara P. Morton.

72/360 in Mary A. McLellan.

56/360 in William Thompson Garratt Allen, also known as William Garratt Allen.

- 16/360 in Mildred Morgan.
- 9/360 in Henry Clay Bond.
- 9/360 in Maxwell W. Bond.
- 9/360 in Florence Eldredge.
- 9/360 in Frederick W. Bond.
- 9/360 in Estate of Alice Eldredge, Deceased.
- 3/360 in Charles Bosse.
- 3/360 in June Lenore Bosse.
- 3/360 in William Maxwell Bosse.
- 18/360 in Bertha Clews Bond.
- 36/360 in Milton D. Garratt.
- 18/360 in Maria Lorenza Trussell.
- 18/360 in Estella Trussell Elizalde.

and defendants Charles N. Douglas and Ethel Tisdall Allen claim some right, title or interest therein.

### VIII.

That subsequent to the commencement of this action and on the 25th day of July, 1946, defendants Title Insurance and Guaranty Company, Jerome J. Wilde and Mervyn Goodman acquired all of the right, title and interest of said owners in and to the land subject of this judgment and the right to compensate for the taking thereof, and that said defendants Title Insurance and Guaranty Company, Jerome J. Wilde and Mervyn Goodman are the only persons, firms or corporations entitled to compensation for the taking of the fee simple interest in said parcels of land, and that said defendants Title Insurance and Guaranty Company,

Jerome J. Wilde and Mervyn Goodman are the only persons, firms or corporations entitled to the payment for the annual use and occupancy of said lands from the aforesaid 25th day of July, 1946, until the vesting of the fee simple title to said parcels of land in plaintiff, and that defendants Clara P. Morton, Mary A. McLellan, William Thompson Garratt Allen, also known as William Garratt Allen, Mildred Morgan McLean, formerly Mildred Morgan, Henry Clay Bond, Maxwell W. Bond, Florence Eldredge Gross, formerly Florence Eldredge, Frederick W. Bond, Frederick W. Bond, Administrator of the Estate of Alice Eldredge, Deceased, Estella Trussell Elizalde, Charles Bosse, June Lenore Bosse Butterfield, formerly June Lenore Bosse, William Maxwell Bosse, Bertha Clews Bond, Milton D. Garratt, Maria Lorenza Trussell, Charles N. Douglas and Ethel Tisdall Allen are the only persons, firms or corporations entitled to the compensation to be paid for the use and occupation of the aforesaid parcels of land from the period July 25, 1942, up until July 25, 1946; that subsequent to the commencement of this action the aforesaid Jerome J. Wilde died and Edith A. Wilde was duly and regularly appointed Executrix of the Estate of said Jerome J. Wilde, and as such Executrix, was duly and regularly substituted as a defendant herein in the place and stead of Jerome J. Wilde, deceased.

## IX.

That the parcels of land subject of this judgment



are situate in the City and County of San Francisco, State of California, and are more particularly described as follows:

Parcel 16—Commencing at the point of intersection of the northeasterly line of Quesada Avenue and the southeasterly line of Von Schmidt Street; running thence northeasterly and along said line of Von Schmidt Street 147 feet,  $5\frac{1}{2}$  inches, to the westerly line of Water Front Street; thence southerly along said line of Water Front Street 159 feet, 9 inches, to the northeasterly line of Quesada Avenue; thence northwesterly along said line of Quesada Avenue 62 feet,  $6\frac{1}{2}$  inches, to the point of commencement.

Being all of Block No. 716 Tide Lands.

Parcel 45—Commencing at the point of intersection of the northeasterly line of Revere Avenue and the southeasterly line of Von Schmidt Street; running thence northeasterly and along said line of Von Schmidt Street 200 feet to the southwesterly line of Quesada Avenue; thence at a right angle southeasterly along said line of Quesada Avenue 96 feet, 6 inches, to the westerly line of Water Front Street; thence southerly along said line of Water Front Street 217 feet, 3 inches, to the northeasterly line of Revere Avenue; thence northwesterly along said line of Revere Avenue 181 feet, 5 inches, to the point of commencement.

Being all of Block No. 726 Tide Lands.

Parcel 46—Commencing at the point of intersection of the northeasterly line of Shafter Avenue and the southeasterly line of Von Schmidt Street; running thence northeasterly and along said line of Von Schmidt Street 200 feet to the southwesterly line of Revere Avenue; thence at a right angle southeasterly along said line of Revere Avenue 215 feet, 41½ inches, to the westerly line of Water Front Street; thence southerly along said line of Water Front Street 217 feet, 3 inches, to the northeasterly line of Shafter Avenue; thence northwesterly along said line of Shafter Avenue 300 feet, 3 inches, to the point of commencement. Being all of Block No. 727 Tidelands.

Parcel 50—Commencing at the point of intersection of the southwesterly line of Revere Avenue and the southeasterly line of Alvord Street; running thence southeasterly and along said line of Revere Avenue 600 feet to the northwesterly line of Ship Street; thence at a right angle southwesterly along said line of Ship Street 200 feet to the northeasterly line of Shafter Avenue; thence at a right angle northwesterly along said line of Shafter Avenue 600 feet to the southeasterly line of Alvord Street; thence at a right angle northeasterly along said line of Alvord Street 200 feet to the point of commencement.

Being all of Block No. 731 Tide Lands.

Now, Therefore, by virtue of the verdict of the jury aforesaid, It Is Hereby Ordered, Adjudged

and Decreed that title to the land above described in Paragraph IX be deemed to be taken and condemned for the public use of the United States of America as authorized by law and will vest in the United States of America upon the depositing in the Registry of the Court of the sum of Four Thousand, Five Hundred, Ninety-six and  $82/100$  Dollars (\$4,596.82), together with interest thereon as hereinafter set forth, free and discharged of all liens and claims of any kind whatsoever.

It Is Further Ordered, Adjudged and Decreed that the sum of Three Thousand, Two Hundred, Thirty-nine and  $32/100$  Dollars (\$3,239.32) together with interest thereon at the rate of Five per cent (5%) from the 11th day of December, 1950, up until the date of the deposit of said sum in the Registry of this Court is hereby awarded to defendants Title Insurance Company, Edith A. Wilde Executrix of the Estate of Jerome J. Wilde, and Mervyn Goodman as full, adequate and just compensation for the taking and condemning of said Parcels 16, 45, 46 and 50 hereinabove described.

It Is Further Ordered, Adjudged and Decreed that the sum of Seven Hundred, Nine and  $62/100$  Dollars (\$709.62) be and it is hereby awarded to defendants Title Insurance and Guaranty Company, Edith A. Wilde, Executrix of the Estate of Jerome J. Wilde, and Mervyn Goodman as full, adequate and just compensation for the exclusive use and occupancy of said Parcels 16, 45, 46 and 50, hereinabove described, for the period July 25, 1946, up until the 11th day of December, 1950.

It Is Further Ordered, Adjudged and Decreed that the sum of Six Hundred, Forty-seven and 88/100 Dollars (\$647.88) be and it is hereby awarded to defendants Clara P. Morton, Mary A. McLellan, William Thompson Garratt Allen, also known as William Garratt Allen, Mildred Morgan McLean, formerly Mildred Morgan, Henry Clay Bond, Maxwell W. Bond, Florence Eldredge Gross, formerly Florence Eldredge, Frederick W. Bond, Frederick W. Bond, Administrator of the Estate of Alice Eldredge, Deceased, Charles Bosse, June Lenore Bosse Butterfield, formerly June Lenore Bosse, Bertha Clews Bond, Milton D. Garratt, Maria Lorenza Trussell, Charles N. Douglas, Estella Trussell Elizalde and Ethel Tisdall Allen as full, adequate and just compensation for the exclusive use and occupancy of said Parcels 16, 45, 46 and 50, hereinabove described, for the period July 25, 1942, up until the 25th day of July, 1946.

It Is Further Ordered, Adjudged and Decreed that said sum of Three Thousand, Two Hundred, Thirty-nine and 32/100 Dollars (\$3,239.32), together with the interest due thereon as hereinabove set forth, be paid forthwith upon the deposit of such sum into the Registry of the Court to Title Insurance and Guaranty Company of San Francisco, California, which company has agreed to act as agent for defendants Title Insurance and Guaranty Company, Edith A. Wilde, Executrix of the Estate of Jerome J. Wilde, deceased, and Mervyn Goodman, without cost, to discharge any liens and encumbrances outstanding against the above-de-



scribed property and pay the balance remaining to said defendants Title Insurance and Guaranty Company, Edith A. Wilde, Executrix of the Estate of Jerome J. Wilde, deceased, and Mervyn Goodman.

It Is Further Ordered, Adjudged and Decreed that the sum of Six Hundred, Forty-seven and 88/100 Dollars (\$647.88) be paid to Title Insurance and Guaranty Company of San Francisco, California, which company has agreed to act as agent for defendants Clara P. Morton, Mary A. McLellan, William Thompson Garratt Allen, also known as William Garratt Allen, Mildred Morgan McLean, formerly Mildred Morgan, Henry Clay Bond, Maxwell W. Bond, Florence Eldredge Gross, formerly Florence Eldredge, Frederick W. Bond, Frederick W. Bond, Administrator of the Estate of Alice Eldredge, Deceased, Charles Bosse, June Lenore Bosse Butterfield, formerly June Lenore Bosse, William Maxwell Bosse, Bertha Clews Bond, Milton D. Garratt, Maria Lorenza Trussell, Estella Trussell Elizalde, Charles N. Douglas and Ethel Tisdall Allen, with cost, to discharge any liens and encumbrances outstanding against the above-described property and to pay the balance remaining to said defendants Clara P. Morton, Mary A. McLellan, William Thompson Garratt Allen, also known as William Garratt Allen, Mildred Morgan McLean, formerly Mildred Morgan, Henry Clay Bond, Maxwell W. Bond, Florence Eldredge Gross, formerly Florence Eldredge, Frederick W. Bond, Frederick W. Bond, Administrator of the Estate

of Alice Eldredge, Deceased, Charles Bosse, June Lenore Bosse Butterfield, formerly June Lenore Bosse, William Maxwell Bosse, Bertha Clews Bond, Milton D. Garratt, Maria Lorenza Trussell, Estella Trussell Elizalde, Charles N. Douglas and Ethel Tisdall Allen, or to their heirs, devisees or assignees.

Done in open Court this 9th day of February, 1951.

/s/ OLIVER J. CARTER,  
Judge, United States District Court, Northern  
District of California.

Service of a copy of the above Preliminary Judgment is hereby acknowledged this 18th day of January, 1951, but not approved as to form as provided by Rule 5(d).

/s/ FRANK A. RITHERS,  
Attorney for  
Other Defendants.

YOUNG, HUDSON &  
RABINOWITZ,

SIMON AXITER,

By /s/ FRANK T. O'NEILL,  
Attorneys for Estate of J. J. Wilde, Mervyn Goodman and Title Insurance and Guaranty Co.

[Lodged]: January 19, 1951.

[Entered]: Feb. 12, 1951.

[Endorsed]: Filed February 9, 1951.

[Title of District Court and Cause.]

ORDER AMENDING AND CORRECTING  
JUDGMENT

The motion of plaintiff for an Order amending and correcting Judgment made and entered herein on the 9th day of February, 1951, insofar as it affects Parcels 16, 45, 46 and 50 as more particularly described in the pleadings on file herein, coming on regularly to be heard pursuant to Notice of Motion duly and regularly served upon defendants and each of them on the 3rd day of April, 1951, M. Mitchell Bourquin and George De Lew appearing in support of said Motion, and Young, Rabinowitz and Chouteau, and Frank T. O'Neill appearing in opposition thereto, and it appearing to the Court that by reason of clerical mistake and inadvertence the Judgment as entered does not correctly state the judgment of this Court;

Now, Therefore, It Is Hereby Ordered that the said Judgment and the record thereof be amended and entered as of February 9, 1951, nunc pro tunc in the following respects:

1. By striking therefrom the language appearing at lines 19 to 21, both inclusive, page 6 of said Judgment and inserting *the* lieu thereof the following: "It Is Further Ordered, Adjudged and Decreed that the sum of Three Thousand, Two Hundred, Thirty-nine and 32/100 Dollars (\$3,239.32), together with interest thereon at the rate of five per cent (5%) from the 11th day of December, 1950, up until the date of the deposit of said sum in the Registry of this Court is hereby";

2. By striking therefrom the language appear-

ing at lines 1 and 2, both inclusive, page 7 of said Judgment and inserting in lieu thereof the following: "It Is Further Ordered, Adjudged and Decreed that the sum of Six Hundred, Forty-seven and 88/100 Dollars (\$647.88) be and it is hereby awarded";

3. By striking therefrom the language appearing at lines 13 and 14, both inclusive, page 7 of said Judgment, and inserting in lieu thereof the following: "It Is Further Ordered, Adjudged and Decreed that said sum of Three Thousand Two Hundred, Thirty-nine and 32/100 Dollars (\$3,239.32), together with";

4. By striking therefrom the language appearing at lines 24 and 25, both inclusive, page 7 of said Judgment and inserting in lieu thereof the following: "It Is Further Ordered, Adjudged and Decreed that the sum of Six Hundred, Forty-seven and 88/100 Dollars (\$647.88) be paid to Title Insurance and Guaranty."

It Is Further Ordered\* that the Clerk make on the original record of said Judgment a marginal reference to this Order and amendment.

Done in open Court this 6th day of April, 1951.

/s/ OLIVER J. CARTER,

Judge, United States District Court, Northern District of California.

[Endorsed]: Filed April 6, 1951.

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\*[Judgment as printed contains corrections as ordered in Order Amending and Correcting Judgment.]



[Title of District Court and Cause.]

MOTION TO AMEND AND  
ALTER JUDGMENT

Now come the defendants, Title Insurance and Guaranty Company, a corporation; Edith A. Wilde, Administratrix of the Estate of Jerome J. Wilde, and Mervyn A. Goodman, and move this Court for an order amending and altering the judgment herein in accordance with the amendments to said judgment heretofore proposed by said defendants and filed herein, for the following reasons, viz.:

1. That said judgment does not conform to or with the verdict returned by the Jury herein.

This motion will be based upon this Notice and upon all the files and records in the above-entitled action.

YOUNG, RABINOWITZ &  
CHOUTEAU,

SIMON ANIXTER,

/s/ FRANK T. O'NEILL,

Attorneys for

Said Defendants.

Receipt of copy acknowledged.

[Endorsed]: Filed February 19, 1951.

District Court of the United States, Northern  
District of California, Southern Division

At a Stated Term of the Southern Division of  
the United States District Court for the Northern  
District of California, held at the Court Room  
thereof, in the City and County of San Francisco,  
on Friday, the 2nd day of March, in the year of  
our Lord one thousand, nine hundred and fifty-one.

Present: The Honorable Oliver J. Carter,  
District Judge.

[Title of Cause.]

This case came on regularly this day for hearing  
on motion to amend and alter judgment. After  
hearing respective counsel, it is Ordered that said  
motion be denied.

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[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Title Insurance and  
Guaranty Company, a corporation; Edith A. Wilde,  
Administratrix of the Estate of Jerome J. Wilde,  
Deceased, and Mervyn Goodman, the defendants  
above named, hereby appeal to the United States  
Court of Appeals for the Ninth Circuit from the  
final judgment entered in this court on February  
12, 1951, and as amended on April 6, 1951.

Dated this . . . . day of April, 1951.

YOUNG HUDSON,  
RABWAY,

YOUNG, RABINOWITZ &  
CHOUTEAU,

ALTMAN & ELLIS,

SIMON D. ANIXTER,

/s/ FRANK T. O'NEILL,  
Attorneys for Appellants.

[Endorsed]: Filed April 28, 1951.

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[Title of District Court and Cause.]

### COST BOND ON APPEAL

Whereas, Title Insurance & Guaranty Co., et al., has appealed to the United States Court of Appeals for the Ninth Circuit from the judgment entered against them in said action, in the United States District Court, in and for the Northern District of California, Southern Division.

Now, Therefore, in consideration of the premises, and of such appeal, the undersigned Maryland Casualty Company, a corporation, duly organized and existing under the laws of the State of Maryland, and duly authorized to transact a general surety business in the State of California, does

undertake and promises on the part of the appellants, to secure the payment of costs if the appeal is dismissed, or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified, not exceeding the sum of Two Hundred, Fifty and No/100 (\$250.00) Dollars, to which amount it acknowledges itself bound.

It is expressly agreed by the Surety that in case of a breach of any condition hereof, the above-entitled Court, may upon notice to the Surety of not less than ten (10) days proceed summarily in the above-entitled action in which this bond is given, to ascertain the amount which the Surety is bound to pay on account of such breach and render judgment therefor against the Surety and award execution therefor, all as provided by and in accordance with the intent and meaning of Rule 34 of the Rules of Practice of the United States District Court in and for the Northern District of California.

In Witness Whereof, the corporate seal and name of the said Surety Company is hereto affixed and attested at San Francisco, California, by its duly authorized officer, this 6th day of April, 1951.

MARYLAND CASUALTY  
COMPANY,

[Seal] By /s/ W. K. KELSO,  
Attorney-in-Fact.

State of California,  
City and County of San Francisco—ss:

On this 6th day of April, 1951, before me, A. McClintock, a Notary Public in and for the City and County of San Francisco, personally appeared W. G. Kelso, known to me to be the Attorney-in-Fact of the Maryland Casualty Company, the corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal at my Office in the City and County of San Francisco the day and year in this Certificate first above written.

[Seal]      /s/ A. McCLINTOCK,  
Notary Public in and for the City and County of  
San Francisco, State of California.

My Commission expires January 12, 1953.

[Endorsed]:    Filed April 28, 1951.

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[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET  
RECORD ON APPEAL

The defendants, Title Insurance and Guaranty Company, a corporation; Edith A. Wilde, Administratrix of the Estate of Jerome J. Wilde, De-



ceased, and Mervyn Goodman, having filed herein, on the 28th day of April, 1951, a Notice of Appeal to the United States Court of Appeals for the Ninth Circuit from the judgment described in said Notice, and good cause appearing therefor,

It Is Ordered that the said defendants, and each of them, be and they are hereby allowed to have to and including the first of July, 1951, within which to docket in the United States Court of Appeals for the Ninth Circuit the record on such appeal.

Done in Open Court this 8th day of June, 1951.

/s/ OLIVER J. CARTER,  
District Judge.

[Endorsed]: Filed June 8, 1951.

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[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET  
RECORD ON APPEAL

The defendants, Title Insurance and Guaranty Company, a corporation; Edith A. Wilde, Administratrix of the Estate of Jerome J. Wilde, Deceased, and Mervyn Goodman, having filed herein, on the 28th day of April, 1951, a Notice of Appeal to the United States Court of Appeals for the Ninth Circuit from the judgment described in said Notice, and good cause appearing therefor,

It Is Ordered that the said defendants, and each

of them, be and they are hereby allowed to have to and including the 20th day of July, 1951, within which to docket in the United States Court of Appeals for the Ninth Circuit the record on such appeal.

Done in Open Court this 2d day of July, 1951.

/s/ OLIVER J. CARTER,  
District Judge.

[Endorsed]: Filed July 2, 1951.

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[Title of District Court and Cause.]

# STATEMENT OF POINTS ON APPEAL

1. That the judgment entered herein on February 12, 1951, does not conform to or with the verdict of the jury returned and filed herein on December 13, 1950.

YOUNG, RABINOWITZ &  
CHOUTEAU,

ALTMAN & ELLIS,

SIMON D. ANIXTER,

/s/ FRANK T. O'NEILL,

Attorneys for Defendant and  
Appellants.

Service of copy acknowledged.

[Endorsed]: Filed July 6, 1951.

In the District Court of the United States for  
the Northern District of California, Southern  
Division

No. 22261

UNITED STATES OF AMERICA,

Plaintiff,

vs.

193 ACRES OF LAND IN THE CITY AND  
COUNTY OF SAN FRANCISCO, STATE  
OF CALIFORNIA; MATILDA PRIOR AN-  
DREWS II, et al.,

Defendants.

Before: Hon. Oliver J. Carter,  
Judge.

REPORTER'S TRANSCRIPT  
PROCEEDINGS IN CHAMBERS

Wednesday, December 13, 1950

Appearances:

For the Plaintiff:

M. MITCHELL BOURQUIN, ESQ.,  
Special Assistant to the Attorney  
General, by

GEORGE DE LEW,  
Special Attorney, and

J. HAROLD WEISE,  
Special Attorney.



For the Defendants Goodman and Wilde and  
Title Insurance and Guaranty Company:

FRANK O'NEILL, ESQ.

For Ethel Tisdale Allen, Maria Trussall, and  
Charles N. Douglas:

YOUNG, HUDSON & RABINOWITZ,

and

ALTYMYER & ELLIS, by

FRANK RETHERS, ESQ.

Mr. De Lew: One short matter is defendant's instruction No. 12. That was ruled upon yesterday, one about the——

The Court: I am not giving that. I am going to give an instruction in its place and I will read it to you, same general type which I prepared myself. Says, in addition to a sum that you shall fix, the market value of the property at the time the Government took possession of the property, July 25, 1942, because you should award to the defendants, compensate them for the reasonable value of the use and occupation of the property by the Government from the 25th day of July, 1942, until the present.

Mr. De Lew: That is satisfactory.

The Court: That is what I am going to give in view of the ruling that I made yesterday.

Mr. O'Neill: That is entirely consistent.

The Court: It is consistent with the theory of the case. Actually not much conflict in the instruc-

tions given by both parties here, and I have taken these instructions and examined them so that—I have gone through to eliminate the ones that would duplicate one another and giving the instructions pretty nearly in accordance with the plaintiff's theory of the case, but there is no real conflict other than on that interest point.

I think I am giving about sixteen or seventeen instructions in all, special instructions, and the general instructions are instructions as to preponderance of the evidence, as to the credibility of witnesses. Now, I have taken your instructions on the expert witnesses; you gave no instructions on that.

Mr. O'Neill: No.

The Court: And I think there is one instruction of the plaintiff that I haven't given. I am going to give it in substance, but I haven't given it in the form—oh, as to plaintiff's No. 4, the language of this instruction, the last sentence,

“If, therefore, in your opinion, the testimony on this question is evenly balanced the defendants must be deemed to have failed in respect thereto,”

I am going to instruct on that subject this way: I am going to say that this being a condemnation action the defendants have the burden of proof and must prove the amount of compensation to which they are entitled to by a preponderance of the evidence. Going on and say preponderance of the evidence is meant such evidence as when weighed with that opposed to it has more convincing force

and from which it results that the greater probability is in favor of the party upon whom the burden rests.

When we speak of the burden of proof and preponderance of the evidence we are not referring necessarily to the number of witnesses who testify on one side or the other. We are referring to the evidence which, when weighed to that opposed to it, is more convincing in your mind.

And then go on: We are concerned with the quality rather than quantity and not bound to rely upon any number of witnesses against a single witness who produces more conviction in your mind. I think this is a broader coverage of the subject, covers it the same way.

I find that when you say the defendant or the plaintiff has failed in a certain point that may create a prejudice in the jurors' minds, or an inference in the jurors' minds that you are tying on to a certain party. Actually preponderance of evidence is determined from the whole evidence in the case, and I don't like to tie it to plaintiff's or defendant's case.

Mr. O'Neill: Satisfactory.

Mr. De Lew: Yes.

The Court: I think that will cover substantially—I am giving most of the plaintiff's instructions, among them general market value and the uses to which the property can be put, those sort of things. And the defendant's instructions I have given some, for instance, I used the defendant's instruction on the constitution, which refers to the condemnation

as being just compensation, and then I am giving the classic definition of market value that you set forth, but it follows—the definition that is set forth in this instruction may be more than is necessary on that, but I thought that they would want a definition.

Then I am giving the defendant's proposed instruction Number 6 as to the sales, other like sales should be used when determining the question of valuation.

And then I am giving the Court's instruction of use and occupation of the property. I think otherwise the plaintiff's instructions have covered the field which you have covered, so it won't take very long to instruct.

Now, I want to take up this verdict. Have you seen the form of the verdict, Mr. O'Neill?

Mr. O'Neill: Yes.

The Court: Is that satisfactory to you, that form of verdict?

Mr. O'Neill: I think so, yes, your Honor.

The Court: It covers the range.

Mr. De Lew: Only one thought I have, Judge,—

The Court: I know it doesn't total 204,000 square feet.

Mr. O'Neill: 68 feet.

Mr. De Lew: 68 feet shy. Also, if it is all right, throw it off parcel 46. It doesn't make any difference.

The Court: Let us leave it as it is.

Mr. O'Neill: It isn't worthwhile changing it, George.

Mr. De Lew: All right.

Mr. O'Neill: Be two and a half, or something.

Mr. De Lew: All right.

The Court: We have stipulated to 204,000 square feet.

Mr. O'Neill: Yes, I have the stipulation.

The Court: I think I will mention when I read the form of instructions to them I will say it is 68 feet less than 204,000 as an actual fact, and in spite of the stipulation that has been entered in Court, and here set forth the exact amount. You have no objections to that, Mr. O'Neill?

Mr. O'Neill: No.

The Court: In effect it will be modifying the stipulation we made so far, but it will be exact and——

Mr. O'Neill: Do you want to give any instructions in regard to making their computation?

The Court: All the testimony we have here as to value has been on so much a square foot, so they can make their own computation. All right, then.

Mr. O'Neill: Any possibility that they would be confused? We, the jury, find the fair market value and is the sum of . . . . . per square foot.

Mr. De Lew: Want a total amount?

The Court: Going to instruct—I am going to take the form of verdict up with them and instruct them that they should put a sum of money that is—which is the total sum of money opposite each



spot there, opposite each blank to write the market value, to make the computation.

Mr. O'Neill: To make it on the basis of so much a square foot.

The Court: Figure it out any basis they want to.

Mr. O'Neill: Supposing they would put in here four cents?

The Court: Suppose it was four cents and inadvertently they just write four cents? I am going to tell them to make the computation, a determination of so much a square foot, then to make the calculation.

Mr. De Lew: There is an engineer among them—an engineer. He wouldn't be tangled up. We have the square feet there.

(End of the proceedings had in Chammers.)

Wednesday, December 13, 1950

## INSTRUCTIONS TO THE JURY

The Court: Ladies and gentlemen of the jury, the presentation of the evidence in this case has been concluded. You have listened to the arguments of respective counsel. Let me say to you first of all that it is your exclusive province to judge the facts in this case; it is the exclusive function of the Court to instruct you as to the applicable law, and in turn you will apply this law to the facts. I express no opinion as to the facts or the evidence, nor do I wish you to understand or conclude from anything I may have said during the trial or during the course of the instructions that I have intended,

directly or indirectly, to indicate any opinion on my part as to the facts or as to what I may think your findings should be.

Now, you will recall that during the course of the trial of this case and from time to time the Court made rulings excluding some evidence, admitting other evidence, and at times the Court interrogated the witnesses himself. From that you should not draw any conclusion that the Court was intending to indicate the opinion of the Court as to the facts or the evidence in this case. What the Court did in those respects was in furtherance of the Court to supervise the trial of the case and to expedite it, and it was for those reasons only and for none other. While it is your duty and function to decide the facts, it is my duty to instruct you as to the law applicable to the facts. I therefore instruct you that you should disregard any preconceived ideas or belief you may have as to what the law is or should be in this case. You should accept the instructions of this Court as to the law without any question so that you can properly determine the facts from the evidence which has been submitted in this case.

In considering the testimony of witnesses who appeared in this case there are certain general rules of law that apply to all types of civil cases which should be of assistance to you in arriving at a decision in this case.

Now, I used the term "civil case" here. This is an action in condemnation and it is in nature generally classified as a civil case. These general rules

apply to all witnesses. A witness is presumed to speak the truth, but this presumption may be negatived by the manner in which he testifies, by his motives, or by evidence to his character or reputation for truth, honesty and integrity. In passing upon the credibility of the various witnesses, it is your right to accept the whole or any part of their testimony, or discard and reject the whole or any part thereof. If it is shown the witness has testified falsely on any material matter, you should distrust his testimony in other particulars, and in that event you are free to reject all of the witness' testimony.

This being a condemnation action, the defendants have the burden of proof and must prove the amount of compensation to which they are entitled, by which is known as a preponderance of the evidence. Preponderance of the evidence is meant such evidence as when weighed with that opposed to it has more convincing force and from which it results that the greater probability is in favor of the party upon whom the burden rests.

When we speak of the burden of proof and preponderance of the evidence we are not necessarily referring to the number of witnesses who testify on one side or the other. We are referring to the evidence which, when weighed to that opposed to it, is more convincing in your mind. In other words, we are concerned with the quality rather than the quantity of the evidence. In this respect you are not bound to decide in conformity with the testimony of a number of witnesses which do not produce conviction in your mind as against the



declaration of a lesser number of witnesses or the presentation of other evidence which appeals to your mind with more convincing force.

In determining the preponderance of the evidence it is your duty to scrutinize carefully the testimony given and in so doing consider the following: the circumstances under which the witness testifies, his or her demeanor on the stand, his or her intelligence, the connection or relationship which he or she bears to either party, the manner in which he or she might be affected by the verdict, the extent to which he or she is contradicted or corroborated by other evidence, if at all, and any other matter which reasonably sheds light upon the credibility of the witness.

You must disregard entirely testimony stricken out by the Court or any testimony to which an objection has been sustained. The attorneys in their argument have commented and argued upon the facts. If you find any variance between the facts as testified to by the witnesses and what has been stated to you by counsel to be the facts, to the extent of such variance, you must consider the facts only as testified by the witnesses.

In your consideration of the evidence and in all of your deliberations in this case, you must wholly exclude any sympathy or prejudice from your minds. In this respect you should not be influenced or affected by the fact that in this case one of the parties is the Government and the other parties are private citizens and landowners, and you should not be influenced in any way by the relative position of

the parties to this litigation. This case is to be considered and determined by you in the same unbiased way as you should consider and determine a case between two private individuals.

Now, there are some special instructions that should be given in a condemnation action of this kind, and I might preface them by saying that your appointed function here is to determine the compensation to which these defendants are entitled, by reason of the taking of their property through condemnation by the Government, and these instructions go generally to that proposition. I might say further before I get into the special instructions that there are two general items of compensation to be considered here. One is the market value of the property at the time the Government took possession which, I believe, was July 25, 1942; the other item of compensation is the reasonable value, or the value of the use and occupation of the property by the Government from the time it did take possession on July 25, 1942, until the present time. Those are the two major items of compensation that you are to compute in this case and you are to make an award in favor of the defendants, and you should do so in accordance with these instructions as I shall give them to you.

This is a condemnation proceeding commenced by the United States of America against the defendants for the purpose of taking and acquiring the property in the City and County of San Francisco, and described in the complaint, for the use of the United States Navy.

The Fifth Amendment of the Constitution of the United States provides that private property shall not be taken for public use without just compensation. Such compensation means the full and perfect equivalent in money of the property taken. The owner is to be put in as good position pecuniarily as he would have occupied if his property had not been taken.

In proceedings for the condemnation of land, the market value thereof as of the date when taken is the measure of damages. In this action the Government took possession of the land on July 25, 1942. The phrase "market value" is synonymous with "actual value." In determining market value, the test is not value for a special purpose, but fair value in view of all the purposes to which the property is naturally adapted. Market value is the highest value in terms of money which the land will bring if exposed to sale for cash in the open market in the community in which situated, with a reasonable time to find a purchaser, buying with full knowledge of all the uses and purposes to which it is adapted, and for which it is capable of being used, and the seller is not required to sell or the buyer required to buy.

The classic definition, "market value," is fixed as the "highest price estimated in terms of money which the land would bring if exposed for sale in the open market with reasonable time allowed in which to find a purchaser, buying with knowledge of the uses and purposes to which it was adapted for which it was capable." This market value may

be greater or less than the value in use to either the owner of the condemnor, but in the eyes of the law it is a fixed amount determined by "the highest sum which the property is worth to persons generally, purchasing in the open market in consideration of the land's adaptability for any proven use."

What the owner is entitled to is the value of the property taken, and that is what it is fairly believed a purchaser in fair market conditions would have given for it in fact—what a purchaser who is not compelled to buy would pay under ordinary circumstances to a seller who is not compelled to sell—but the owner is not entitled to have damages based upon a plan of improvement that is speculative and fanciful.

It would be unjust to the public that the United States should be required to pay the defendants more than the fair market value of the property appropriated for the public use.

In arriving at the market value you are not to consider what the property was worth to the Government, for to allow that element to enter into your deliberations would be to make the Government's necessity—the owner's opportunity. In other words, neither need for selling nor need for purchasing should be considered. It is what the defendant could have obtained for the property if it had been offered for sale in the market—a reasonable time being given within which to make the sale.

It is the condition of the property at the time it was taken and before any improvement and ex-



penditure thereon by the Government that you must consider in determining its fair market value.

The location, physical characteristics, advantages and disadvantages of land subject of condemnation are proper matters to be shown in evidence in determination of its market value. These are matters which would naturally be taken into calculation in forming a public and general estimate of the value of property and influence the minds of sellers and buyers with relation thereto, and accordingly the Court instructs you that to the extent that such matters are shown by the evidence the jury may properly consider the same in arriving at its conclusion of the just compensation to be paid.

You are not to consider what the property was worth to the defendants, for speculation or merely for possible usage, nor what the defendants claim it was worth to them, nor what it may be worth to the Government for a defense project. You are not to consider the price the property would sell for under special or extraordinary circumstances, but its fair market value if offered in the market under ordinary circumstances for cash, a reasonable time being given to make the sale.

An estimate of value based upon the special adaptation of the land condemned for a particular purpose is not warranted in the absence of evidence to show or from which can be inferred a reasonable expectation of some demand at some time for use of the land for such purposes. In this connection I instruct you that the Government's wartime necessity for the development of the property for a

particular purpose standing alone cannot be considered in estimating the value of the property taken.

Whatever purpose the defendants or any of them may have had in connection with the future use of the property can add nothing to its market value. The fact that this purpose may have been defeated by condemnation, however, such a disappointment, is not a matter of compensation.

A use existing or contemplated on property is distinct from the market value of the property itself and is not the conclusive basis for fixing such market value, and, standing alone, is not to be considered as determining the value of the property. Value in use is not to be considered by you as determining the market value of the property.

You should not concern yourselves at all with the question of whether or not any individual owner was willing to part with his property or wanted to sell, or even that he may have desired to retain it for or because of its adaptability to some planned use of his own. Condemnation is the substitute for the willingness of the owner to sell and in resolving the market value you must deal with the properties in suit just as if each was being offered for sale. It is the fair cash market value and not the value of the property to the owner or to the Government that you are to determine.

Sales of other properties admitted in evidence should be considered by you, insofar as such sales, looking at the circumstances, in each instance, may evidence or throw light upon the fair market value of the land being condemned, unaffected by the



Government's acquisition thereof for public purposes.

Now, in addition to any sum that you shall fix as the market value of the property as of the time the Government took possession of the property on July 25, 1942, you should also award to the defendants a sum of money which will compensate them for the reasonable value of the use and occupation of the property by the Government from the 25th day of July, 1942, to the present time.

While it is essential in the nature of the issues to be submitted to you, the testimony thereon be given through experts as to value and extent of damages, you are not required passively to accept the opinions of such experts in arriving at your verdict, but you should weigh and judge of such opinions in view of all the testimony in the case, and your own general knowledge of affairs.

The opinion of a witness as to the market value of property may be good or bad or indifferent, depending on how well qualified or how earnest the witness may be to express such an opinion. You are not bound to accept the opinion of any witness as to the market value of this property, but must determine the fact for yourselves, and in so doing it is your province to weigh the testimony of each witness who has expressed such an opinion with reference to all the circumstances surrounding not only the property itself, but the familiarity of the witness with such property, and to determine from all such circumstances how well qualified the witness may be to express a true opinion of its market

value, and you may, in your discretion, reject the testimony of any witness who has expressed such an opinion if it appears to your satisfaction that such an opinion is not based upon such a thorough knowledge of all facts and circumstances relating to the property, or which you believe has been formed and expressed with disregard for the proven facts and circumstances of the property in question.

In weighing the evidence in estimating the market value of the property, the jurors are permitted to exercise their own individual judgment as to the values, upon subjects within their own knowledge, which they have acquired through experience and observation.

Ladies and gentlemen, if you can conscientiously do so, you are expected to agree upon a verdict. You should freely consult with one another in the jury room. If any of you should be convinced that your view of the case is erroneous, do not be stubborn and do not hesitate to abandon your own view under such circumstances. On the other hand, it is entirely proper for you to adhere to your own view, if, after a full exchange of ideas, you still believe you are right.

If you should find in favor of defendant in this case, you should not, in arriving at the amount of your verdict, resort to the so-called pooling plan or scheme. That scheme is for each juror to write down the amount he or she thinks should be awarded, then add up the total and divide by twelve, and thus fix the amount of the verdict. Your verdict should be based upon the evidence and not upon chance.

I might say here that you should not resort to the plan of averaging the values testified to by the respective witnesses, and in saying that I don't mean you have to find in conformity with any one particular witness as to values, but don't do it by an averaging or a mathematical calculation plan of averaging what the witnesses have testified. You do it upon your own considerations, although you may have to use mathematical calculations to do that.

The Court finally cautions you that if it becomes necessary for the jury to communicate with the Court during its deliberations, or upon its return to the Court, respecting any matter, connected with the trial of this case, you should not indicate to the Court in any manner how the jury stands numerically or otherwise on the issues submitted. This caution the jury should observe at all times after the case is submitted to it and until the jury has reached a verdict.

Whenever you agree upon a verdict it is the verdict of the jury. In other words, your verdict must be unanimous in this Court. When you retire to the jury room to deliberate, you will select one of your number as foreman or forelady, and he or she will sign your verdict for you when it has been agreed upon, and he or she will represent you as your spokesman in the further conduct of this cause in this Court, and if you have any communication to make to the Court you do it through the attaches of the Court. You will be in the care of a deputy

marshal and you can communicate to him and he can communicate to the Court.

We have prepared a form of verdict for you, and it is rather lengthy. I am going to read it to you and point out one minor divergence from a stipulation that has been previously made. I might say by way of prefacing that, counsel stipulated here that the total square footage of all four parcels was 204,000 square feet. The actual square footage is 68 square feet less than that total, and in the verdict here, in the form of verdict, each parcel has been listed with the exact number of square feet as shown in the pleadings, and the stipulation as to the total of 204,000 square feet is modified to the extent of the 68 square feet difference.

And then the verdict, after setting up the square footage for parcels 16, 45, 46 and 50, reads as follows:

“We, the jury, find that the fair market value of Parcel 16, containing 4,611 square feet, is the sum of ..... dollars.”

Now, after that blank, you should fill in a sum of money which you determine to be the fair market value of that property as of the date of the taking of possession by the Government. The verdict should be in the sum of money in an amount per square foot. You should make the calculation yourselves for the total sum of money.

Then the verdict further reads:

“We, the jury, find the fair market value of the annual use of Parcel 16 is the sum of ..... dollars.”

And again you should put a sum of money which is the value of the use for the period of time from July 25, 1942, to the present time, and you don't put so much a square foot a year; we want it in—it should be in a sum of money; that is a calculation for you to make.

Now, then, you have two findings in the same form for Parcel 45, and you have two findings in the same form for Parcel 46, and two findings in the same form for Parcel 50, and in each one the square footage of the property is different so that you will have to make the calculation in each case, and in respect to each parcel you will make the findings in an amount: (1) as the fair market value as of the date of the taking; (2) the value of the use and occupation referred to here, the fair market value of the annual use.

Now, that doesn't mean for one year, that means for the whole time. When they talk about the annual use they are talking about the annual use for the period of time from July 25, 1942, to the present time.

Now, Mr. Clerk, will you deliver the verdict to the jury, and ladies and gentlemen of the jury you will retire after the officers who will have you in their care and custody are sworn. Will you swear the officers, Mr. Clerk?

(Officers sworn.)

The Court: Mr. Marshal, will you take the jury to the jury room?



(12:05 p.m. Jury in the box.)

The Court: I might say for the record that a question has been directed to the Court concerning the verdict.

Mr. Foreman, am I correct in assuming that your question is that you want to know what the meaning of "Annual Use" is, what period of time that covers, is that correct?

The Foreman: That is right, your Honor. As it is typed here in the verdict it says, "We, the jury, find that the fair market value of the annual use of the various parcels is the sum of .....". We understood you to say that we were to put in a lump sum, but we didn't think your typed statement indicated that.

The Court: That is right. I referred to that particularly and explained it, but I will explain it again so that you may be sure. That portion as to each parcel that you are referring to refers to the period of time from July 25, 1942, until the present time.

The Foreman: Yes.

The Court: But there it is termed the annual—you are to determine upon an annual value for the use and occupation times the number of years that are involved, so it will be a lump sum for the total period for the annual use and occupation. In other words, the annual use and occupation would be the use and occupation for one year times the number of years involved. You then determine the lump sum. Is that clear?



The Foreman: Your explanation is clear, sir, but——

The Court: Well, the verdict will be interpreted in the light of the instructions. The term “Annual Use” is a term that refers to the use and occupation on an annual basis, but it is for the total period of time. Now, Counsel, that is the sense of the verdict as it was discussed this morning, is it not?

Mr. De Lew: Your Honor, I just thought, if it would make it any simpler, just put it on the one year basis and we could compute it.

The Court: I think it should be in a lump sum. You should compute the lump sum and compute it for the total number of years, even though you may determine it on an annual basis.

The Foreman: It will be understood that the value we put on the verdict is for the total time.

The Court: That is right.

The Foreman: Regardless of how we figure it.

The Court: That is right, that is your privilege to compute.

The Foreman: That didn't appear to be what the verdict shows.

The Court: The verdict itself may be ambiguous in its language, but that is the interpretation we have put on it, that is the method you are to follow.

The Foreman: That answers our questions.

The Court: You may retire for further deliberation.

(Court at recess.)

## Certificate of Reporter

I, Official Reporter and Official Reporter pro tem, certify that the foregoing transcript of 23 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting, to the best of my ability.

/s/ RUSSELL D. NORTON.

[Endorsed]: Filed July 16, 1951.

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO  
RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents, listed below, are the originals filed in this Court, or true copies of orders entered in this Court, in the above-entitled case, and that they constitute the record on appeal as designated by the attorneys herein:

Verdict.

Preliminary Judgment as to Parcels 16, 45, 46 and 50.

Order amending and correcting judgment.

Motion to amend and alter judgment.

Order denying motion to amend and alter judgment.

Notice of appeal.

Cost bond on appeal.

Statement of points on appeal.

Order extending time to docket record on appeal,  
filed June 8, 1951.

Order extending time to docket record on appeal,  
filed July 2, 1951.

Appellants' designation of record on appeal.

Appellee's designation of record on appeal.

Reporter's transcript, December 13, 1950.

In Witness Whereof I have hereunto set my hand  
and affixed the seal of said District Court this 17th  
day of July, 1951.

[Seal]                      C. W. CALBREATH,  
Clerk,

By /s/ C. M. TAYLOR,  
Deputy Clerk.

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[Endorsed]: No. 13015. United States Court of  
Appeals for the Ninth Circuit. Title Insurance and  
Guaranty Company, a Corporation; Edith A. Wilde,  
Administratrix of the Estate of Jerome J. Wilde,  
Deceased, and Mervyn Goodman, Appellants, vs.  
United States of America, Appellee. Transcript of  
Record. Appeal from the United States District  
Court for the Northern District of California,  
Southern Division.

Filed July 17, 1951.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

In the United States Circuit Court of Appeals  
In and for the Ninth Circuit

No. 13015

UNITED STATES OF AMERICA,

Plaintiff and Appellee,

vs.

193 ACRES OF LAND IN THE CITY AND  
COUNTY OF SAN FRANCISCO, STATE  
OF CALIFORNIA; MATILDA PRIOR AN-  
DREWS II, TITLE INSURANCE AND  
GUARANTY COMPANY, a Corporation;  
EDITH A. WILDE, Administratrix of the  
Estate of JEROME J. WILDE, Deceased, and  
MERVYN GOODMAN, et al.,

Defendants and Appellants.

STATEMENT OF POINTS AND DESIGNA-  
TION OF RECORD FOR PRINTING

Comes now the appellants, Title Insurance and Guaranty Company, a corporation; Edith A. Wilde, Administratrix of the Estate of Jerome J. Wilde, Deceased, and Mervyn Goodman, in the above-entitled cause, and hereby adopt as its and their statement of points on appeal on which it and they intend to rely on this appeal, the statement of points on appeal as it now appears in the transcript of the record herein.

Appellants hereby designate for printing the entire certified transcript of the record.

ALTMAN AND ELLIS,  
SIMON D. ANIXTER,  
YOUNG, RABINOWITZ &  
CHOUTEAU,

/s/ FRANK T. O'NEILL,  
Attorneys for Defendants and  
Appellants.

Receipt of copy acknowledged.

[Endorsed]: Filed July 27, 1951.

